

MEMORANDUM

TO: Hunter and Central Coast Regional Planning Panel (HCCRPP)
FROM: Port Stephens Council (PSC)
DATE: 29 November 2023
FILE NO: DA 16-2023-42-1
PROPERTY: 80 Mount Hall Road RAYMOND TERRACE
PROPOSAL: Alterations and additions to Educational Establishment – Irrawang High School
SUBJECT: Disagreement regarding conditions - Section 7.12 Contributions and Engineering Condition

This Memorandum has been prepared to support the Council Assessment Report for this Development Application (DA). Specifically, the memorandum explains in detail one of the key assessment issues, relating to the imposition of a condition for Section 7.12 Contributions and further engineering related condition.

The proposal is a Crown DA, pursuant to Section 4.33 of the EP&A Act and a consent authority must not impose a condition without approval of the applicant or the Minister. The applicant was provided with a draft set of conditions and in response the applicant requested a number of minor miscellaneous changes to conditions. The conditions the applicant requested to be modified are documented at **Attachment B**. The requested changes to conditions are acceptable to Council with the exception of the request to delete the condition for S.7.12 contributions and a further engineering condition preventing the flood inundation of the ground floor of the proposed buildings.

The applicants reasoning for not supporting a condition for Section 7.12 contributions is as follows:

“Planning Circular D6 represents the consistently held view that the Department of Education, as a Crown authority, provides critical community infrastructure and that to levy any developer contribution on provision of public education facilities increases the cost of such infrastructure for all taxpayers in the State.”

However, Planning Circular D6 is a guideline published in 1995 and the applicant's position is contrary to the Port Stephens Local Infrastructure Contributions Plan 2020 (LIC Plan). The LIC Plan provides that an educational establishment is not subject to Section 7.11 Contributions. The LIC Plan states that all development that is not subject to Contributions under Section 7.11 of the EP&A Act is subject to Contributions under Section 7.12, with the exception of development identified as exempt from requirements

to pay contributions under any applicable Ministerial Direction issued under Section 7.17 of the EP&A Act.

There is no Ministerial Direction that excludes educational establishments from the requirement to pay contributions and therefore it is considered that Section 7.12 contributions are applicable.

Further to this, local infrastructure contributions fund the facilities and services necessary to support growth. A shortfall in expected funding will impact Council's ability to deliver the planned infrastructure and upgrades in the works schedule of the LIC Plan such as shared paths and footpaths in the area surrounding the school. The applicable contribution for this DA would be a 1% levy on the estimated cost of the development, which at the time of the DA being lodged was \$19,215,132, equating to an \$192,151 contribution (subject to change based on a new cost estimate at the time of payment).

Council has consistently applied contributions on educational premises, including recently for DA 16-2020-230-1 for a TAFE Crown development at 1 Central Avenue, Salamander Bay and DA 16-2022-97-1 for alterations and additions to St Michael's School at 12 Sproule Street Nelson Bay. Advice consistent with this approach was also provided in September 2021 in response to an enquiry from Schools Infrastructure NSW regarding Irrawang High School which requested a waiver to the Section 7.12 contributions associated with a Complying Development Certificate (CDC). In the letter response, Council advised that Section 7.12 contributions would be applicable to the CDC.

For these reasons, Council considers it appropriate for any approval of the DA to include a condition relating to the payment of local infrastructure contributions, consistent with the Port Stephens LIC Plan.

The applicant also did not approve condition 2.2 of the recommended conditions which is intended to prevent flood inundation of the proposed buildings. The applicant suggested the following changes to the condition:

2) Civil engineering plans – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications and include the following:

*a) Overland flows across the ~~entire~~ hydraulic catchment/s **for the new development** are to be controlled, up to and including the 1% Annual Exceedance Probability design rainfall event, so as to not create inundation of buildings or nuisance. Discharges of existing overland flow paths **that are impacted by the development** may be via infiltration or level spreading so as to not concentrate flows or otherwise create nuisance impacts offsite.*



Details demonstrating compliance must be provided to and approved by the Crown Certifier prior to the issue of Crown certification for any drainage works.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

The changes suggested by the applicant do not meet the original intent of the condition and essentially result in the condition having no effect, as it would now only involve controlling overland flows from new buildings, despite the problematic uncontrolled flows being generated by existing buildings. The uncontrolled flows generated by the existing buildings will inundate the lower floor of the proposed buildings unless appropriately catered for/diverted elsewhere across the site. For this reason, there is a clear nexus for a condition requiring these uncontrolled flows to be managed. Alternatively, the new buildings should be raised above the flood level. Without this condition, the proposal is inconsistent with Chapter B5 – Flooding of the PSDCP.

Retention of these conditions is recommended to ensure compliance with the Port Stephens LIC Plan and Chapter B5 of the DCP. In accordance with Section 4.33 a consent authority must not impose a condition without approval of the applicant or the Minister. Whilst Council does not agree to removing the S.7.12 contributions condition the discretion to refer the matter to the Minister lies with the HCCRPP as the consent authority.

Regards,

Dylan Mitchell
Principal Development Planner
Port Stephens Council

Attachments:

- Attachment A: Recommended conditions of consent
- Attachment B: Applicants comments on conditions of consent